UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION

Civil Action No. 5:22-cv-00050-M

MADISON CAWTHORN, an individual,	
Plaintiff,	
v.)	STATE BOARD DEFENDANTS' RESPONSE TO DEFENDANT-
DAMON CIRCOSTA, in his official capacity)	INTERVENORS' RENEWED MOTION TO INTERVENE
as Chair of the North Carolina State Board of) Elections, et al.,	
Defendants.)	

NOW COME Defendants Damon Circosta, Stella Anderson, Jeff Carmon, III, Stacy Eggers, IV, Tommy Tucker, and Karen Brinson Bell in their official capacities ("Defendants" or "State Board Defendants"), through undersigned counsel, to provide this response to Defendant-Intervenors' renewed motion to intervene as Defendants. [D.E. 87, 88, 92].

State Board's Position & Interests

State Board Defendants do not oppose Defendant-Intervenors' request for permissive intervention. State Board Defendants take no position on mandatory intervention. Although the State Board disagrees with this Court's ruling on the Amnesty Act of 1872, at this time, the State Board is still considering whether it will file a notice of appeal ahead of the April 11, 2022 deadline, and if so, the scope of that appeal.

In order to update the Court and the parties regarding the current stage of the election, as of this morning, March 28, 2022, county boards of elections began mailing out absentee ballots to voters for the upcoming May 17, 2022 primary. N.C.G.S. § 163-227.10(a).

While the State Board has an interest in ensuring the proper functioning and administration

of elections, the State Board also has an interest in discharging its duties under North Carolina law to ensure candidates satisfy the legal qualifications for office.

In contrast, Defendant-Intervenors' stated interests are "to litigate their challenge and, if successful, obtain a ruling that [Plaintiff] is disqualified from the 2022 ballot." [D.E. 88, pp. 7-8 (emphasis removed)]. The State Board does not share Defendant-Intervenors' interests that are focused on a particular outcome of a challenge to disqualify a particular candidate in this election.

Finally, the March 17, 2022 Order from the United States Court of Appeals for the Fourth Circuit directed this Court to consider whether the state court order staying all qualification-related challenges remains in effect. [D.E. 92-9, pp. 4]. Consistent with its prior filing on the subject (D.E. 70), the State Board Defendants can confirm their understanding that the January 11, 2022 stay to candidate challenges issued by the North Carolina Superior Court (D.E. 9-3), was lifted when the final emergency stay before the U.S. Supreme Court was denied and that finally resolved which Congressional map would be used in the upcoming election. A petition for a writ of certiorari has been filed with the U.S. Supreme Court in the redistricting case, but that petition is not seeking to alter any congressional districts for the 2022 election. Pet. for Writ of Cert. at 4–5, *Moore v. Harper*, No. 21-1271 (U.S. S. Ct.)¹.

Conclusion

For the reasons above, the State Board Defendants do not oppose intervention and leave the method by which intervention is accomplished to the Court.

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¹ https://www.supremecourt.gov/DocketPDF/21/21-1271/218823/20220317132356259_2022-03-17%20Moore%20Cert.%20Petition.pdf

Respectfully submitted this the 28th day of March, 2022.

JOSHUA H. STEIN Attorney General

/s/ Terence Steed

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